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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JEFFREY SCOTT ZIEGLER,

9 Petitioner,

10 v.

11 JASON BENNETT,

12 Respondent.

13 CASE NO. 3:24-cv-5381

14 ORDER OVERRULING OBJECTIONS
15 AND ADOPTING REPORT AND
16 RECOMMENDATION

17 **1. INTRODUCTION**

18 Before the Court is the Report and Recommendation (R&R) of the Honorable
19 Michelle L. Peterson, United States Magistrate Judge for the Western District of
20 Washington, recommending that the Court dismiss Petitioner Jeffrey Scott Ziegler's
21 case without prejudice. Dkt. No. 9. Ziegler objects. Dkt. No. 10. Based on its de novo
22 review of the R&R, the objections, and the remainder of the record, the Court
23 OVERRULES Ziegler's objections and ADOPTS the R&R.

24 **2. BACKGROUND**

25 Ziegler remains confined at the Stafford Creek Corrections Center in
26 Aberdeen, Washington, pursuant to a conviction and sentence entered in Clark
27

1 County Superior Court case number 05-1-01088-6 in December 2005. Dkt. No. 6-3
 2 at 2. Ziegler alleges he was arrested on May 12, 2005, without a warrant. *Id.*; Dkt.
 3 No. 6-2 at 1-2. Ziegler also argues his improper arrest robbed Clark County Superior
 4 Court of jurisdiction to convict and sentence him, and therefore, he has been
 5 improperly confined. Dkt. No. 6-2 at 3. In his petition, Ziegler concedes he did not
 6 appeal his conviction; instead, he claims “[t]his filing constitutes an appeal.” Dkt.
 7 No. 6 at 2.

8 On June 6, 2024, Judge Peterson ordered Ziegler to show cause, within 30
 9 days, “why his petition and this action should not be dismissed for failure to
 10 exhaust state court remedies.” Dkt. No. 8 at 2. Judge Peterson also warned that if
 11 Ziegler failed to file a timely response, she would recommend dismissal. *Id.* Ziegler
 12 did not respond, and Judge Peterson issued an R&R, recommending that the Court
 13 dismiss his petition without prejudice and deny a certificate of appealability. Dkt.
 14 No. 9. at 2-3.

15 3. DISCUSSION

16 Ziegler raises eight objections. Dkt. Nos. 10, 11.

17 OBJECTION	18 RULING
19 Objection 1: Ziegler objects 20 to the “entire” R&R.	21 Overruled. Objections must be specific to an 22 issue in the R&R. 28 U.S.C. § 636 (“A [district 23 court] judge . . . shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”) (emphasis added). Even if the Court overlooks the vague nature of Ziegler’s first objection, it still lacks merit—the R&R’s findings and recommendations are legally sound.

OBJECTION	RULING
Objection 2: The R&R “failed to address Petitioner’s Request for Certification[.]”	Overruled. The R&R “careful[ly] review[ed] [Ziegler’s] petition and “the balance of the record[.]” Because Ziegler filed his request for certification with his petition, the R&R addressed this issue, however, it did not impact the analysis. The Court agrees with the R&R’s conclusion that this request does not change the fact that Ziegler failed to exhaust his state court remedies; thus, his petition cannot proceed.
Objection 3: The R&R “failed to address Petitioner’s Affidavit of Support[.]”	Overruled. Ziegler filed his affidavit with his petition, so the same reasoning applied in Objection 2 applies here. The Court finds Ziegler’s affidavit inconsequential to the determinative issue of exhaustion.
Objection 4: Citing Rule of Evidence 201(b), (e), Petitioner claims the R&R failed to take judicial notice nor was he allowed to be heard on the issue.	Overruled. Because the Court finds this case must be dismissed for failure to exhaust remedies, and Ziegler’s request for judicial notice does not change this requirement, the Court overrules this objection. <i>See Bennett v. Bennett</i> , No. C24-0272JLR, 2024 WL 2748807, at *2 (W.D. Wash. May 29, 2024); <i>Warner v. Bennett</i> , No. C24-5414-KKE-MLP, 2024 WL 4107308, at *1 (W.D. Wash. Sept. 5, 2024) (overruling the same objection).
Objection 5: The R&R “failed to order the respondent to produce a certified copy of the [a]rrest [w]arrant[.]”	Overruled. Ziegler provides no support for the notion that he is entitled to a court order for documents even though his case cannot proceed given he failed to pursue state court remedies. This request does not impact the Court’s analysis.
Objection 6: The R&R “failed to consider whether or not an evidentiary hearing would benefit a merits resolution[.]”	Overruled. The Court has discretion over whether to hold an evidentiary hearing, and “if the record . . . precludes habeas relief, a district court is not required to hold an evidentiary hearing.” <i>Schriro v. Landigan</i> , 550 U.S. 465, 474 (2007). Ziegler does not identify how an evidentiary hearing would preserve his case nor does he dispute the Court’s finding that he

OBJECTION	RULING
	failed to exhaust his state court remedies even though such exhaustion was required.
Objection 7: The R&R “asserts a [p]rocedural [d]efense without any party asserting [an exhaustion] defense[.]”	Overruled. “[T]he Ninth Circuit has held that the court ‘may consider whether state remedies have been exhausted even if the state does not raise the issue.’” <i>Warner v. Bennett</i> , No. C24-5414-KKE-MLP, 2024 WL 4107308, at *2 (W.D. Wash. Sept. 5, 2024) (quoting <i>Campbell v. Crist</i> , 647 F.2d 956, 957 (9th Cir. 1981)). The Court may sua sponte consider exhaustion.
Objection 8: The R&R “recharacterizes” the petition as one filed under 28 U.S.C. § 2254 rather than 28 U.S.C. § 2241.	Overruled. As Judge Peterson explained in the R&R, because Ziegler is a state court prisoner challenging the constitutionality of his detention, 28 U.S.C. § 2254 is the exclusive avenue under which he may proceed. Therefore, the R&R properly construed his petition under 28 U.S.C. § 2254.

4. CONCLUSION

Accordingly, the Court finds and ORDERS:

- The R&R, Dkt. No. 9, is approved and ADOPTED.
- Ziegler’s petition for writ of habeas corpus, Dkt. No. 6, and this action are DISMISSED without prejudice for failure to exhaust state court remedies.
- Ziegler’s subsequent motions, Dkt. Nos. 12, 13, 14, and 15, are DENIED as moot.
- In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a certificate of appealability is DENIED.

- The Clerk is directed to send copies of this Order to Ziegler and to the Honorable Michelle L. Peterson.

Dated this 1st day of November, 2024.

Jamal W
Jamal N. Whitehead
United States District Judge